

Customs and Excise (Tobacco) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Customs and Excise Act 2018 (the **Act**). It enacts measures to combat tobacco smuggling, and to secure Crown revenue from taxes on tobacco, by imposing import controls over tobacco products, and tobacco leaf and refuse. To reduce the costs of processing border seizures of illicit tobacco, the Bill amends the Act to provide for a simplified seizure process. Tobacco products are highly taxed for public policy reasons, and to reflect the negative health impacts and costs of tobacco consumption on individuals and society. Smuggled tobacco is part of an increasing black market to evade tax, and current smuggling patterns are undermining the effectiveness of border controls.

The purpose of the Bill is to tighten border controls so as to reduce revenue evasion and increase Customs' visibility on imports, and to close off import channels used by smugglers. The measures contained in the Bill are consistent with the principles of the World Health Organization Framework Convention on Tobacco Control.

Permit required to import certain tobacco products

The Bill imposes import controls by making tobacco products and tobacco leaf and refuse prohibited imports. This means they can only be imported if a permit has been issued by the chief executive of Customs (or if the import fits within one of the other limited exceptions, such as tobacco that is in New Zealand only temporarily as part of an international transshipment). The passenger duty-free concession operating at airports and seaports is unaffected. Any importation without a permit, or that is not in compliance with the conditions of the permit, would be subject to forfeiture.

Tobacco products are defined to include cigarettes, pipe tobacco, and hand rolling tobacco but to not include cigars and similar products. The Bill provides that a condition of every permit issued is that the permit holder must not import the goods using

any method that requires the goods to be received by or transmitted through a registered postal operator.

Simplified seizure process and compensation for destruction of goods in error

To further disincentivise smuggling, and to reduce Customs' processing and storage costs for dealing with smuggled tobacco products, the Bill amends the Act to allow a simplified seizure process for illegally imported tobacco products. The process requires a written notice to the importer informing them that the goods have been seized and condemned. Customs would destroy the goods as soon as possible.

The Bill provides that in the event of tobacco products being seized and destroyed in error by Customs (for example, when the person had a valid permit to import), the importer will be entitled to apply for compensation for the Customs value of the goods lost.

Departmental disclosure statement

The New Zealand Customs Service is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=251>

Regulatory impact assessment

The New Zealand Customs Service produced regulatory impact assessments on 18 November 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <https://www.customs.govt.nz/about-us/information-releases/cabinet-material/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 states that the Bill will come into force on **1 July 2020**.

Part 1

Amendments to Customs and Excise Act 2018

Clause 3 states that *Part 1* of the Bill amends the Customs and Excise Act 2018 (the **Act**).

Clause 4 adds a reference to the new tobacco provisions, and related new schedules, to the description of Part 3 in section 4 of the Act.

Clause 5 amends section 5 of the Act to add a definition of tobacco refuse, and to update a cross-reference in the definition of prohibited imports.

Clause 6 inserts *new section 95A*. *New section 95A* prohibits the import of tobacco leaf, manufactured tobacco, and tobacco refuse into New Zealand unless the importer meets one of the exceptions in *subsection (3)*. In summary, the prohibition does not apply to tobacco imported by a person holding a permit issued under *new Schedule 3A* or by a person who brings tobacco into the country with them (for example, as part of their duty-free allowance), and does not apply to tobacco that enters New Zealand but only temporarily (for example, as part of an international transshipment). In relation to manufactured tobacco, certain products (specified in *subsection (2)*) are excluded from the prohibition.

Clause 7 amends section 181 of the Act, which relates to the seizure of goods. If Customs seizes goods in reliance on section 178, section 181 requires Customs to notify any person with an interest in the goods (or their agent). The effect of the amendment made by *clause 7* is to relieve Customs of that obligation in relation to seized goods that are tobacco or tobacco products prohibited from import under *new section 95A*.

Clause 8 amends section 184 of the Act, which typically enables the importer of seized goods to apply for a review of the seizure. The effect of the amendment made by *clause 8* is to make the review process unavailable to importers in respect of seized goods that are tobacco or tobacco products prohibited from import under *new section 95A*.

Clause 9 amends section 185 of the Act so as to exclude tobacco or tobacco products prohibited from import under *new section 95A* from the reach of the section. This means that the process in section 185 relating to the condemnation of goods will not apply to those goods.

Clause 10 inserts *new sections 185A and 185B*, which set out an expedited seizure and condemnation process for tobacco or tobacco products prohibited from import under *new section 95A*.

Clause 11 inserts *new section 189A*, which enables an importer of tobacco or tobacco products to apply (on limited grounds) for compensation regarding the seizure and condemnation of those goods.

Clause 12 amends section 266 (which relates to actions that a Customs officer may take for the purpose of investigating potential breaches of the Act) so as to include a cross-reference to *new section 95A*.

Clause 13 amends section 388 (which specifies offences in relation to the import and export of prohibited goods) to add a cross-reference to *new section 95A*.

Clause 14 amends section 389 (which specifies offences in relation to knowingly importing or exporting prohibited goods) to add a cross-reference to *new section 95A*.

Clause 15 inserts *new Part 3* (dealing with transitional provisions) into Schedule 1 of the Act.

Clause 16 inserts *new Schedules 3A and 3B* into the Act. *New Schedule 3A* establishes a process for applying for a permit to import tobacco and tobacco products otherwise prohibited by *new section 95A*. *New Schedule 3B* establishes a process for an importer to apply for and receive compensation in relation to tobacco or tobacco products incorrectly seized by Customs and condemned under *new section 185A*.

Part 2

Amendment to Trans-Tasman Mutual Recognition Act 1997

Clause 17 makes a consequential amendment to Schedule 1 of the Trans-Tasman Mutual Recognition Act 1997, to include a cross-reference to *new section 95A* of the Act.

Hon Jenny Salesa

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Customs and Excise (Tobacco) Amendment Act **2020**.

2 Commencement

This Act comes into force on **1 July 2020**.

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Part 1

Amendments to Customs and Excise Act 2018

3 Amendments to Customs and Excise Act 2018

This Part amends the Customs and Excise Act 2018.

4 Section 4 amended (Overview of Act)

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(1) After section 4(4)(d)(ii), insert:

(ia) tobacco; and

(2) In section 4(4)(d)(iii), replace “(subpart 4)” with “(subpart 4 and **Schedules 3A and 3B**)”.

5 Section 5 amended (Definitions for Act)

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(1) In section 5(1), insert in its appropriate alphabetical order:

tobacco refuse means any scraps, waste, chippings, stems, or deposits of tobacco resulting from the processing of tobacco

(2) In section 5(1), definition of **prohibited imports**, paragraph (a), replace “section 95 or 96” with “section 95, **95A**, or 96”.

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6 New section 95A inserted (Prohibition on importation of tobacco and certain tobacco products)

After section 95, insert:

95A Prohibition on importation of tobacco and certain tobacco products

- (1) The importation of the following goods is prohibited: 5
 - (a) tobacco leaf:
 - (b) manufactured tobacco, excluding the goods specified in **subsection (2)**:
 - (c) tobacco refuse.
- (2) The prohibition in **subsection (1)** does not apply to the following goods: 10
 - (a) cigars:
 - (b) cigarillos:
 - (c) water-pipe tobacco:
 - (d) chewing tobacco:
 - (e) snuff: 15
 - (f) snus.
- (3) The prohibition in **subsection (1)** does not apply if—
 - (a) the person importing the goods—
 - (i) has a permit granted by the chief executive under **Schedule 3A**, allowing the goods to be imported; and 20
 - (ii) complies with any conditions of the permit; or
 - (b) the goods are in the possession or under the control of a person specified in section 30(1)(a); or
 - (c) the goods—
 - (i) are not unloaded in New Zealand and are destined for a point outside New Zealand; or 25
 - (ii) are to be, or are being, transhipped internationally, and are covered by a transshipment request made under section 87(2) and granted by the chief executive.

7 Section 181 amended (Notice of seizure) 30

After section 181(1), insert:

- (1A) Subsection (1) does not apply in respect of seized goods that are tobacco or tobacco products prohibited from import under **section 95A**.

8 Section 184 amended (Application for review of seizure)

After section 184(2), insert:

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- (3) This section does not apply in respect of seized goods that are tobacco or tobacco products prohibited from import under **section 95A**.

9 Section 185 amended (Condemnation of seized goods)

In section 185(1), after “section 178”, insert “, other than goods that are tobacco or tobacco products prohibited from import under **section 95A**”.

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10 New sections 185A and 185B inserted

After section 185, insert:

185A Condemnation of seized goods that are tobacco or tobacco products

- (1) This section applies to goods that—
- (a) are tobacco or tobacco products prohibited from import under **section 95A**; and
 - (b) have been seized under section 178.
- (2) The goods are condemned to the Crown when they are seized.

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185B Notice of seizure and condemnation of goods that are tobacco or tobacco products

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- (1) If goods have been seized and condemned to the Crown under **section 185A**, Customs must, as soon as is reasonably practicable, notify—
- (a) any person who Customs knows or believes has an interest in the goods; or
 - (b) if any such person is overseas, his or her agent in New Zealand.
- (2) The notice must be in writing and contain the reasons for the seizure and condemnation.
- (3) A seizure and condemnation is not invalid or illegal by reason of a failure to provide a notice under this section if reasonable steps were taken to give the notice.

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11 New section 189A and cross-heading inserted

After section 189, insert:

Compensation for incorrect disposal of certain goods

189A Application for compensation for incorrect disposal of tobacco and certain tobacco products

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- (1) This section applies to any person who has imported goods into New Zealand that—
- (a) are of a kind described in **section 95A(1)(a) to (c)**; and

- (b) have been seized under section 178 and condemned under **section 185A**, on the grounds that the goods are prohibited from import under **section 95A**.
- (2) The person may apply to the chief executive for compensation, on the basis that the importation was not in breach of **section 95A**. 5
- (3) The application must be made in accordance with **Schedule 3B**.
- 12 Section 266 amended (Controlled delivery)**
 Replace section 266(1)(b)(i) with:
 (i) been imported in contravention of section 95 or **95A**; or
- 13 Section 388 amended (Offences in relation to importation or exportation of prohibited goods)** 10
 In section 388(1)(e), replace “section 96 or 97” with “**section 95A**, 96, or 97”.
- 14 Section 389 amended (Offences in relation to knowingly importing or exporting prohibited goods)** 15
 In section 389(1)(d), replace “section 96 or 97” with “**section 95A**, 96, or 97”.
- 15 Schedule 1 amended**
 In Schedule 1, after Part 2, insert the **Part 3** set out in **Schedule 1** of this Act.
- 16 New Schedules 3A and 3B inserted** 20
 After Schedule 3, insert the **Schedules 3A and 3B** set out in **Schedule 2** of this Act.

Part 2

Amendment to Trans-Tasman Mutual Recognition Act 1997

- 17 Amendment to Trans-Tasman Mutual Recognition Act 1997** 25
- (1) This section amends the Trans-Tasman Mutual Recognition Act 1997.
- (2) In Schedule 1, category 1, after “section 95”, insert “or **95A**”.

Schedule 1
New Part 3 inserted into Schedule 1

s 15

Part 3		
Provisions relating to Customs and Excise (Tobacco) Amendment Act 2020		5
39	Interpretation	
	In this Part,—	
	amendment Act means the Customs and Excise (Tobacco) Amendment Act 2020	10
	commencement date means the date on which the amendment Act comes into force.	
40	Tobacco or tobacco products imported as at commencement date	
(1)	This section applies to goods that are tobacco or tobacco products prohibited from import by section 95A that, as at the commencement date, have been imported into New Zealand.	15
(2)	This Act applies to the goods as if the amendment Act had not come into force.	

Schedule 2
New Schedules 3A and 3B inserted

s 16

Schedule 3A		
Permit to import tobacco and tobacco products		5
		s 95A(3)(a)
1	Application for permit to import tobacco and certain tobacco products	
(1)	A person may apply to the chief executive for a permit to import goods otherwise prohibited from import under section 95A .	
(2)	The application must—	10
	(a) be in writing; and	
	(b) include the applicant’s address for correspondence; and	
	(c) include any supporting documents that the chief executive considers appropriate.	
2	Chief executive may request further information	15
	The chief executive may, at any time, require an applicant to provide any further information the chief executive considers relevant for the purposes of the application.	
3	Chief executive must determine application	
(1)	The chief executive must determine an application by—	20
	(a) granting a permit to import the goods; or	
	(b) refusing the application.	
(2)	The chief executive must not grant a permit to import the goods unless the chief executive is satisfied that the applicant—	
	(a) holds a current licence to use an area as a Customs-controlled area for one of the purposes specified in subclause (3) ; or	25
	(b) intends to use the goods for a legitimate purpose unrelated to the manufacture of tobacco for smoking; or	
	(c) intends to import manufactured tobacco only, either for commercial resale or personal use.	30
(3)	The purposes referred to in subclause (2)(a) are as follows:	
	(a) the manufacture of Part A goods:	
	(b) the deposit, keeping, or securing of imported goods, or of Part A goods, without payment of duty, pending their export:	

- (c) the storing of dutiable goods on which the duty has not been paid, pending their sale to persons arriving in, or departing from, New Zealand.
- (4) **Subclause (2)** does not limit the chief executive's discretion to decide on other grounds not to grant a permit.
- (5) The chief executive must notify an applicant in writing of any decision made under this clause. 5
- (6) An applicant who is dissatisfied with a decision of the chief executive under this clause may, within 20 working days after the date on which the notice of the decision is given, appeal to a Customs Appeal Authority against that decision. 10
- 4 Grant of permit**
- (1) A permit to import the goods must—
- (a) specify the applicant as the permit holder; and
- (b) include a condition that the permit holder must not import the goods using any method that requires the goods to be received by or transmitted through a registered postal operator. 15
- (2) A permit may include conditions that enable the chief executive to monitor compliance with the other conditions of the permit.
- (3) The chief executive may include in a permit any other terms, conditions, or restrictions that the chief executive considers appropriate. 20
- 5 Variation of terms, conditions, or restrictions**
- (1) The chief executive may, by notice in writing to the permit holder,—
- (a) vary or revoke a term, condition, or restriction imposed under **clause 4**; or
- (b) impose a new term, condition, or restriction under **clause 4**. 25
- (2) A permit holder who is dissatisfied with a decision of the chief executive under this clause may, within 20 working days after the date on which the notice of the decision is given, appeal to a Customs Appeal Authority against that decision.
- 6 Revocation or suspension of permit** 30
- (1) The chief executive may revoke or suspend a permit if—
- (a) the permit holder no longer holds a current licence to use an area as a Customs-controlled area for one of the purposes specified in **clause 3(3)**; or
- (b) the permit holder has failed to comply with a term, condition, or restriction imposed under **clause 4**. 35
- (2) The chief executive must notify the permit holder in writing if the chief executive intends to revoke or suspend a permit under **subclause (1)(b)**.

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- (3) **Subclause (2)** does not apply if the chief executive considers that there is good reason not to give notice of the revocation or suspension.
 - (4) If the chief executive revokes or suspends a licence, the chief executive must notify the permit holder in writing of the revocation or suspension.
 - (5) A permit holder who is dissatisfied with a decision of the chief executive under this clause may, within 20 working days after the date on which the notice of the decision is given, appeal to a Customs Appeal Authority against that decision. 5

Schedule 3B

Application for compensation for incorrect disposal of tobacco and certain tobacco products

s 189A

- 1 Application for compensation for incorrect disposal of tobacco and certain tobacco products** 5
- An application for compensation under **section 189A(2)** must—
- (a) be in writing; and
 - (b) include the applicant's address for correspondence; and
 - (c) be made no later than 20 working days after the date on which the notice under **section 185B** was given or, if the applicant did not receive the notice, any time that the chief executive allows; and 10
 - (d) specify the basis on which the applicant considers that the importation of the goods that are the subject of the application was not in breach of **section 95A**; and 15
 - (e) include any documentation that may support the applicant's application.
- 2 Chief executive may request further information**
- The chief executive may require an applicant to provide any further information that the chief executive considers reasonably necessary to enable him or her to make a decision. 20
- 3 Conduct of review**
- (1) The chief executive must determine an application for compensation on the papers, unless he or she considers it is not appropriate to do so.
 - (2) The chief executive must consider— 25
 - (a) the application; and
 - (b) any further information supplied in accordance with **clause 2** and any other statement, document, information, or matter that the chief executive considers will assist him or her to deal effectively with the subject of the review (whether or not that statement, document, information, or matter would be admissible in a court of law). 30
- 4 Decision on application**
- (1) The chief executive must determine an application for compensation no later than 20 working days after the date on which the application is received.
 - (2) The chief executive must determine an application for compensation by— 35
 - (a) granting the application and allowing compensation to be paid in accordance with **clause 5**; or

	(b) dismissing the application.	
(3)	The chief executive may make different determinations under subclause (2) in respect of different parts of the goods.	
(4)	The chief executive may extend the period specified in subclause (1) for determining an application as much as is reasonably necessary if, in the chief executive's opinion, the circumstances of the case do not allow a decision to be made within the specified time.	5
5	Grant of application	
(1)	The chief executive may, if he or she is satisfied that the importation of the goods (or any part of the goods) was not in breach of section 95A , grant the application and direct that compensation be paid to the applicant.	10
(2)	Any compensation paid under this section must not exceed the Customs value of the goods in respect of which compensation is to be paid.	
6	Dismissing application	
	The chief executive must dismiss the application if the chief executive is satisfied that all of the goods that are the subject of the application were imported in breach of section 95A .	15
7	Notifying applicant of decision	
(1)	As soon as practicable after making a decision on an application for compensation, the chief executive must give written notice of the decision to—	20
	(a) the applicant; and	
	(b) any other person to whom the notice of seizure and condemnation was given under section 185B .	
(2)	The notice must state the reasons for the decision.	
(3)	An applicant who is dissatisfied with a decision of the chief executive under clause 4 may, within 20 working days after the date on which the notice of the decision is given, appeal to a Customs Appeal Authority against that decision.	25